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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LAURA J. BUTLER and GEORGE M. MOORE

Appeal 2009-005954
Application 08/902,005¹
Technology Center 2400

Decided: March 12, 2010

Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO,
and MARC S. HOFF, *Administrative Patent Judges*.

HOFF, *Administrative Patent Judge*.

DECISION ON APPEAL

¹ The real party in interest is Microsoft Corporation.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 (a) from a Non-Final Rejection of claims 1-43 and 45-50. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellants' invention concerns a video broadcast system and method that includes a broadcast source that broadcasts a video stream and provides accompanying supplemental data files. Each supplemental data file is an HTML file having instructions for rendering a hyperlink overlay on the video stream. A receiver is configured to receive the video stream and accompanying supplemental data files and to display hyperlink overlays in conjunction with the video stream. The overlays are designed having backgrounds of a pre-determined value which are used as a color key in receiving equipment. Specifically, the receiving equipment is configured to render video only in display areas that are set to the color key value. Thus, the video stream is rendered "behind" the hyperlink overlays, such that the backgrounds of the overlays appear transparent. Control data is provided with the HTML files to indicate when the overlays should be rendered and to provide other instructions on how the HTML files should be handled by the receiving equipment (Abstract).

Claim 1 is exemplary:

1. A method comprising the following steps:
transmitting a video stream;

formatting supplemental data files in a graphical markup language, each supplemental data file having instructions for rendering a hyperlink overlay on the video stream, wherein formatting comprises setting transparent areas of each hyperlink overlay to a key color;

transmitting the supplemental data files along with the video stream.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:²

Adams	WO 96/10888	Apr. 11, 1996
Kikinis	US 5,929,849	Jul. 27, 1999
		(filed May 2, 1996)

Claims 15 and 32 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.³

Claims 1-43 and 45-50 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kikinis in view of Adams.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Appeal Brief (filed February 10, 2006), the Reply Brief (filed June 5, 2006), the supplemental Reply Brief (filed November 10, 2006), and the revised Examiner's Answer (mailed October 20, 2006) for their respective details.

ISSUES

Appellants contend that whether a particular combination would result in a flexible or more efficient system is not the standard that is to be used to make out a *prima facie* case of obviousness (App. Br. 13). Appellants contend that Kikinis does not disclose a supplemental data file having instructions for rendering a hyperlink overlay on the video stream that was transmitted in the transmitting step (App. Br. 20). Appellants contend that the Dynamic URL is simply an URL that is "presented on the Internet" to

² The Lyons reference was retracted by the Examiner in the revised Examiner's Answer dated October 20, 2006.

³ The Examiner has withdrawn the 35 U.S.C. § 101 rejection of claims 15 and 32 (Ans. 3).

download a web page (App. Br. 21). Adams does not disclose or suggest the use of key color or a color keying video hardware (App. Br. 23, 28). Appellants contend that the Examiner's motivation for making the combination is too general and lacking in the type of particularity that is required to make out a *prima facie* case of obviousness (App. Br. 23).

The Examiner finds that Kikinis discloses Dynamic URL control routines that are transmitted along with a video stream, wherein the Dynamic URL control routines serve as supplemental data files having instructions (Ans. 4). The Examiner finds that Adams clearly discloses instructions for rendering/overlaid objects/images by setting specific screen background color of the object to be transparent (set to a key color) on the video stream display in a synchronization manner (Ans. 5). The Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kikinis with Adams's object oriented instruction set so as to enable a content programmer to be able to create a video stream display screen from a programming studio and to flexibly control the area around the video stream display including the definition and placement of objects/text/images over the video stream display (Ans. 5).

Appellants' contentions present us with the following three issues:

1. Does Kikinis disclose a supplemental data file having instructions for rendering a hyperlink overlay on the video stream that was transmitted in the transmitting step?
2. Does Adams disclose instructions for rendering/overlaid objects/images by setting specific screen background color of the object to

be transparent on the video stream display in a synchronization manner (using a key color or a color keying video hardware)?

3. Would it have been obvious to modify Kikinis in view of Adams to achieve the advantage of creating a video stream display screen from a programming studio and to flexibly control the area around the video stream display including the definition and placement of objects, text, and images over the video stream display, as Adams suggests?

FINDINGS OF FACT

The following Findings of Fact (FF) are shown by a preponderance of the evidence.

The Invention

1. According to Appellants, the invention concerns a video broadcast system and method that includes a broadcast source that broadcasts a video stream and provides accompanying supplemental data files. Each supplemental data file is an HTML file having instructions for rendering a hyperlink overlay on the video stream. A receiver is configured to receive the video stream and accompanying supplemental data files and to display hyperlink overlays in conjunction with the video stream. The overlays are designed having backgrounds of a pre-determined value which is used as a color key in receiving equipment. Specifically, the receiving equipment is configured to render video only in display areas that are set to the color key value. Thus, the video stream is rendered “behind” the hyperlink overlays, such that the backgrounds of the overlays appear transparent. Control data is provided with the HTML files to indicate when

the overlays should be rendered and to provide other instructions on how the HTML files should be handled by the receiving equipment (Abstract).

2. The display hardware includes bit-mapped graphics capabilities for displaying static bit-mapped images in conjunction with conventional application programs. PC 14 includes video color keying hardware that can be configured to display video only in display areas that are set to a key color (Spec. 7:22-8:2).

3. PC 14 includes a video subsystem 66, known and manufactured by numerous companies, that couples to monitor 68 for the purpose of being configured to overwrite only those areas of the bit-mapped display image that are set to a predetermined color or chroma key value, thereby establishing that the bit-mapped image includes "transparent" areas or regions set to the color key value (Fig. 2; Spec. 10:22-11:10).

Kikinis

4. Kikinis discloses a display system that receives a data stream having successive image frame data in frame regions and Internet Universal Resource Locator (URL) data and association data in data regions between frame regions, and displays on a display monitor successive frames derived from the image frame data. The association data associates one or more image entities in successive frames with one or more URLs, and a viewer, by selecting an associated image entity in the display, causes the system to access the Internet, to connect to a source on the Internet associated with the URL, to download a WEB page from the source, and to display the WEB page in the display. The viewer may interact with the displayed WEB page to access further related information. Entities may be enhanced in the display to indicate association with a hidden URL (Abstract).

5. Kikinis discloses that data stream 59 includes a video stream of first and second frames (61 and 65) interspersed with supplemental data in data regions 63 and 67 defining a Dynamic URL, such as a BMW emblem that serves as a hyperlink to the related Web-pages (Fig. 2B; col. 7, ll. 18-27).

6. Kikinis discloses that after the user activates the BMW emblem defined by the data regions 63 and 67, a window 71 is displayed over the video streamed display defined by the TV frames, 61 and 65 (Fig. 2C; col. 8, ll. 5-17).

7. Kikinis discloses the process used by an apparatus in conjunction with the data stream containing a dynamic URL in the display system. In step 83, the data stream is received bearing entity data and one or more dynamic URLs in a data region separate from image frame data. In step 85, the interframe data corresponding to the dynamic URL control routines is stripped away from the video stream to be executed by the CPU in step 87 (Fig. 3A; col. 9, ll. 24-40).

Adams

8. Adams discloses an interactive video system that processes a video data stream and an associated data stream corresponding to the video data stream. The interactive video system displays a video image defined by the video data stream on a display device 50 and performs interactive command functions specified by the associated data stream. The interactive command functions may include commands that specify the placement of a video display window 40, commands that specify parameters of graphical objects 44 associated with the video image and commands that specify pixel

data or graphics description for the graphical object and commands for placement of selection windows 42 (Abstract).

9. Adams discloses a packetized digital data stream that includes a video packet 80, an audio packet 82, and an associated data packet 84 having an associated time-stamp (Fig. 5; 19:11-22).

10. Adams discloses that the associated data packet 84 is carried using a chrominance key which is a sideband transmission or an audio sub-carrier. The command protocol contains commands that perform the function defining the screen background color or, in the alternative, an object oriented command set may be used to define the background of the displayed image to be transparent, solid in color, or a repeated object/pattern (20:15-25; 21:11-25).

11. Adams discloses that the computer system 10 extracts associated data for the incoming video signal and decodes the extracted associated data which specifies the parameters for the information display window 46 and the video window 40 (Fig. 1; 14:5-14). A processor 52 reads the incoming associated data packets from the associated data queue 74 and performs the video command and control functions specified in the incoming associated data packets (Fig. 3; 18:14-17). Specifically, the associated data packets from the associated data queue 74 include commands that specify the placement of graphic objects on the display device 12 and commands for the placement and sizing of the video window 40 on the display surface 50 (Figs. 2, 3; 23:15-24:10).

PRINCIPLES OF LAW

On the issue of obviousness pursuant to 35 U.S.C. § 103, the Supreme Court has stated that “[t]he obviousness analysis cannot be confined by a formalistic conception of the words teaching, suggestion, and motivation.” *KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 419 (2007). Further, the Court stated, “[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results.” *Id.* at 416. “One of the ways in which a patent’s subject matter can be proved obvious is by noting that there existed at the time of invention a known problem for which there was an obvious solution encompassed by the patent’s claims.” *Id.* at 419-20.

The determination of obviousness must consider, *inter alia*, whether a person of ordinary skill in the art would have been motivated to combine the prior art to achieve the claimed invention and whether there would have been a reasonable expectation of success in doing so. *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1125 (Fed. Cir. 2000). Where the teachings of two or more prior art references conflict, the Examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another. *In re Young*, 927 F.2d 588, 591 (Fed. Cir. 1991). If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1984). Further, our reviewing court has held that “[a] reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from

following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.” *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994); *see also Para-Ordnance Mfg., Inc. v. SGS Imps. Int’l, Inc.*, 73 F.3d 1085, 1090 (Fed. Cir. 1995).

ANALYSIS

Claims 1, 4, 6, 8, and 10-15

Independent claim 1 recites a method comprising

transmitting a video stream;

formatting supplemental data files in a graphical markup language, each supplemental data file having instructions for rendering a hyperlink overlay on the video stream, wherein formatting comprises setting transparent areas of each hyperlink overlay to a key color; [and]

transmitting the supplemental data files along with the video stream.

Appellants contend that whether a particular combination would result in a flexible or more efficient system is not the standard that is to be used to make out a *prima facie* case of obviousness (App. Br. 13). Appellants contend that Kikinis does not disclose a supplemental data file having instructions for rendering a hyperlink overlay on the video stream that was transmitted in the transmitting step (App. Br. 20). Appellants contend that the Dynamic URL is simply a URL that is “presented on the Internet” to download a web page (App. Br. 21). Adams does not disclose or suggest the use of key color (App. Br. 23). Finally, Appellants contend that the Examiner’s motivation for making the combination is too general and lacking in the type of particularity that is required to make out a *prima facie* case of obviousness (App. Br. 23).

The Examiner finds that Kikinis discloses Dynamic URL control routines that are transmitted along with a video stream, wherein the Dynamic URL control routines serve as supplemental data files having instructions (Ans. 4; FF 5, 7). The Examiner finds that the control routine of the Dynamic URL is notoriously well known in the computer art to be files with CGI extension or scripts with coded syntax in different format, i.e., HTML, DHTML (Dynamic HTML), and XML (Extensible HTML) in which Kikinis's system must be formatted at the server/headend (Ans. 21).

The Examiner finds that Adams discloses an interactive TV system in which the receiver receives video stream and accompanying associated data stream of associated data packet 84 that includes an associated data payload that specifies interactive video command and control functions that perform functions such as placement of graphic objects on the display 12, rendering graphic objects on the display by setting specific screen background color of the object to be transparent (set to a key color) (Ans. 4-5; FF 8-10). Hence, the Examiner finds that Adams clearly discloses instructions for rendering/overlaid objects/images by setting the screen background color of the object to be transparent (set to a key color) on the video stream display in a synchronized manner (Ans. 5; FF 8-10).

The Examiner concludes that the motivation to combine the teachings of Kikinis with the teachings of Adams is that one of ordinary skill in the art would modify Kikinis with Adams's object oriented instruction set so as to enable a content programmer to flexibly control the area around the video stream display including the definition and placement of objects/text/images over the video stream display (Ans. 5).

We are not persuaded by Appellants' arguments. We agree with the Examiner's finding that Kikinis teaches transmitting a video stream with a supplemental data file having instructions for rendering a hyperlink overlay on the video stream, since Kikinis discloses in Figure 3A that a data stream bearing image frame data and a dynamic URL are received in step 83 (Ans. 4; FF 7). We agree with the Examiner's finding that the control routine of the Dynamic URL is notoriously well known in the computer art to be files with CGI extension or scripts with coded syntax in different format, i.e., HTML, DHTML (Dynamic HTML), and XTM (Extensible HTML) in which Kikinis's system must be formatted at the server/headend (Ans. 21). We agree with the Examiner that Adams discloses the use of key color since the command protocol contains commands that perform the function of defining the background screen color to be transparent or solid (FF 10). We find that the Examiner's motivation of designing a flexible or more efficient system is sufficiently supported to make out a *prima facie* case of obviousness.

We therefore find no error in the Examiner's rejection of claim 1 under 35 U.S.C. § 103 and that of depending claims 4, 6, 8, and 10-15 not separately argued.

Claim 2

As noted *supra*, we sustained the rejection of claim 1 from which claim 2 depends. In addition, as noted *supra*, we agree with the Examiner's finding that Kikinis teaches a supplemental data file having instructions for rendering a hyperlink overlay on the video stream that was transmitted in the transmitting step (Ans. 4; FF 7).

We therefore sustain the Examiner's rejection of claim 2 under 35 U.S.C. § 103, for the same reasons expressed with respect to the § 103 rejection of parent claim 1, *supra*.

Claim 3

Appellants contend that Adams does not disclose transmitting timing specifications associated with the supplemental data files (App. Br. 26).

The Examiner finds that Adams discloses that a timing specification (time stamp) transmitted with associated data packets (supplemental data files) includes a time stamp, i.e., time synchronization with the video stream when the graphical object is overlaid on the video stream at specific location of the screen (Ans. 6; FF 8-9).

As noted *supra*, we sustained the rejection of claim 1 from which claim 3 depends. In addition, as noted *supra*, we agree with the Examiner's finding that Kikinis teaches a supplemental data file having instructions for rendering a hyperlink overlay on the video stream that was transmitted in the transmitting step (FF 4-5). We also agree with the Examiner's finding that Adams discloses transmitting time stamp information within the packetized data stream that includes a video stream transmitted along with supplemental data file information (FF 8-9).

We therefore sustain the Examiner's rejection of claim 3 under 35 U.S.C. § 103, for the same reasons expressed with respect to the § 103 rejection of parent claim 1, *supra*.

Claim 5

Appellants contend that since Kikinis does not disclose supplemental data files, it is virtually impossible for the references to disclose receiving

any such video stream and accompanying data files to display the hyperlink overlays in conjunction with the video stream (App. Br. 27).

The Examiner finds that Kikinis discloses receiving the video stream along with the accompanying supplemental data files to display the hyperlink overlays in conjunction with the video stream (Ans. 6; FF 4-7).

As noted *supra*, we sustained the rejection of claim 1 from which claim 5 depends. In addition, as noted *supra*, we agree with the Examiner's finding that Kikinis teaches a supplemental data file having instructions for rendering a hyperlink overlay on the video stream that was transmitted in the transmitting step (FF 4-5). Further, we agree with the Examiner that Kikinis discloses receiving the video stream along with the supplemental data files of the Dynamic URL for the purpose of displaying the hyperlink overlays over the video display (FF 6).

We therefore sustain the Examiner's rejection of claim 5 under 35 U.S.C. § 103, for the same reasons expressed with respect to the § 103 rejection of parent claim 1, *supra*.

Claim 7

Appellants argue that Adams does not disclose displaying the video stream only in the areas of the hyperlink overlays that are set to a key color (App. Br. 28).

The Examiner finds that Adams discloses displaying the video steam only in the areas of the hyperlink overlays that are set to a key color (App. Br. 7; FF 10).

As noted *supra*, we sustained the rejection of claim 5 from which claim 7 depends. In addition, as noted *supra*, we agree with the Examiner's finding that Adams discloses the use of key color (FF 10). Further, we agree

with the Examiner that Adams discloses displaying the video stream only in the areas of the hyperlink overlays that are set to a key color since Adams discloses setting the background to a color key of transparent (FF 10).

We therefore sustain the Examiner's rejection of claim 7 under 35 U.S.C. § 103, for the same reasons expressed with respect to the § 103 rejection of parent claims 1 and 5, *supra*.

Claims 16-23

Independent claim 16 recites a method including the steps of

formatting HTML files having instructions for rendering hyperlink pages on a video stream, the hyperlink pages having transparent areas that are set to a key color;

associating the HTML files with the video stream;

displaying the hyperlink pages on a display; [and]

displaying the video stream on the display in areas of displayed hyperlink pages that are set to a key color.

Appellants argue that claims 1, 5, and 7 contain language that is different from the specific language recited in claim 16 but contend that claim 16 is allowable for the same reasons given for claims 1, 5, and 7 (App. Br. 30).

As noted *supra*, we sustained the rejections of claims 1, 5, and 7. As noted with respect to claim 1 *supra*, we agree with the Examiner's finding that Adams formats the supplemental data files, wherein transparent areas of each hyperlink overlay is set to a key color (FF 8-10). We also agree with the Examiner's finding that Kikinis teaches a supplemental data file having instructions for rendering a hyperlink overlay on the video stream that was transmitted in the transmitting step as noted with respect to claim 5 *supra*. Further, we agree with the Examiner that Kikinis discloses receiving the

video stream along with the supplemental data files of the Dynamic URL for the purpose of displaying the hyperlink overlays over the video display (FF 6-7).

We therefore sustain the Examiner's rejection of independent claim 16 and that of dependent claims 17-23 under 35 U.S.C. § 103, for the same reasons expressed with respect to the § 103 rejection of claims 1, 5, and 7, *supra*.

Claims 24-39

Independent claims 24 and 32 recite the steps of

associating one or more hyperlink pages with the video stream, the hyperlink pages having transparent areas that are set to a key color;

displaying the hyperlink pages on a display; [and]

displaying the video stream on the display in areas of displayed hyperlink pages that are set to a key color.

Appellants merely contend that "for all of the reasons set forth above" independent claims 24 and 32 should be allowable (App. Br. 31-32). As noted with respect to claim 1 *supra*, we agree with the Examiner's finding that Adams formats the supplemental data files, wherein transparent areas of each hyperlink overlay are set to a key color (FF 8-10). We also agree with the Examiner's finding that Kikinis teaches a supplemental data file having instructions for rendering a hyperlink overlay on the video stream that was transmitted in the transmitting step as noted with respect to claim 5 *supra*. Further, we agree with the Examiner that Kikinis discloses receiving the video stream along with the supplemental data files of the Dynamic URL for the purpose of displaying the hyperlink overlays over the video display (FF 6-7).

We therefore sustain the Examiner's rejection of independent claims 24 and 32 and that of respective dependent claims 25-31 and 33-39 under 35 U.S.C. § 103, for the same reasons expressed with respect to the § 103 rejection of claim 16, *supra*.

Claims 9, 40-43, and 45-50

Claim 9 recites "the displaying step comprises displaying the hyperlink overlay and using color keying video hardware that displays video only in display areas that are set to a key color."

Independent claim 40 recites "wherein the receiver comprises color keying hardware that displays video only in display areas that are set to a key color."

Independent claim 45 recites "the display hardware including color keying hardware that displays video in display areas that are set to a key color."

Appellants contend that Adams does not disclose color keying video hardware (App. Br. 28, 34-35). Appellants merely contend that "for the same reasons set forth above" claims 40-43 and 45-50 should be allowable (App. Br. 33, 35).

The Examiner finds that Adams discloses displaying the graphic/text items overlay and using color keying hardware 56 that displays video only in the display areas that are set to a key color (Ans. 9; FF 10-11).

As noted *supra*, we sustained the rejection of claim 5 from which claim 9 depends. In addition, as noted *supra*, we agree with the Examiner's finding that Adams discloses the use of key color (FF 10).

Our rules require that the Appeal Brief contain:

For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(l)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. 112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters.

37 C.F.R. § 41.37(c)(l)(v). Thus, we consult Appellants' Summary of the Claimed Subject Matter in the Appeal Brief to assess whether the Specification describes structure, material, or acts corresponding to the functions recited in claims 9, 40, and 45.

Appellants cite to page 7, line 22, to page 8, line 2, of their Specification, as describing the "color keying hardware" (App. Br. 5). When we look to the Specification to find the corresponding structure, we find a reference to personal computer (PC) 14 which includes "video color keying hardware" (FF 2). When we review Figure 2, however, which discloses the hardware components of PC 14, we see *no reference* to a "video color keying hardware."

We do find, however, that the Specification does make reference to video subsystem 66, known and manufactured by numerous companies, that couples to monitor 68 for the purpose of being configured to overwrite only those areas of the bit-mapped display image that are set to a predetermined color or chroma key value, thereby establishing that the bit-mapped image includes "transparent" areas or regions set to the color key value (FF 3). Accordingly, we find that Adams discloses that the computer system 10 extracts associated data for the incoming video signal and decodes the

extracted associated data which specifies the parameters for the information display window 46 and the video window 40 (FF 11). We find that processor 52 reads the incoming associated data packets from the associated data queue 74 and performs the video command and control functions specified in the incoming associated data packets (FF 11). Specifically, the associated data packets from the associated data queue 74 include commands that specify the placement of graphic objects on the display device 12 and commands for the placement and sizing of the video window 40 on the display surface 50 (FF 11). Since the object oriented command set may include parameters that set the background to transparent, it is apparent from the disclosure of Adams that “video color keying hardware” includes computer system 10, processor 52, associated data queue 74, and display device 12. We, therefore, agree with the Examiner’s finding that Adams discloses “video color keying hardware” that displays video only in display areas that are set to a key color, wherein the hyperlink overlays have transparent areas that are set to a key color.

We therefore sustain the Examiner’s rejection of claims 9, 40, and 45 and that of dependent claims 41-43 and 46-50 under 35 U.S.C. § 103, for the reason expressed above and for the same reasons expressed with respect to the § 103 rejection of parent claims 1 and 5, *supra*.

CONCLUSIONS OF LAW

Kikinis discloses a supplemental data file having instructions for rendering a hyperlink overlay on the video stream that was transmitted in the transmitting step.

Adams discloses instructions for rendering/overlaid objects/images by setting specific screen background color of the object to be transparent on the video stream display in a synchronization manner (using a key color or a color keying video hardware).

It would have been obvious to modify Kikinis in view of Adams to achieve the advantage of creating a video stream display screen from a programming studio and to flexibly control the area around the video stream display including the definition and placement of objects, text, and images over the video stream display, as Adams suggests.

ORDER

The Examiner's rejection of claims 1-43 and 45-50 is affirmed.
No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

babc

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